

FILED

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NORTH CAROLINA
Wilmington Division

NOV 28 2016

STEPHANIE J. BUTLER, CLERK
U.S. BANKRUPTCY COURT
EASTERN DISTRICT OF NC

JOYCE M LONEY
Plaintiff

CASE NO.: 1605804-5-SWH
CHAPTER 13

vs.

USAA FSB
MATTHEW TYNAN and
REID PHILLIPS

**MOTION FOR VIOLATION OF AUTOMATIC STAY AND CREDITOR
MISCONDUCT**

Plaintiff, JOYCE M. LONEY., a people of North Carolina hereby moves the court for an award of damages against Defendants, USAA FSB and it's Attorneys, for a violation of automatic stay and alleges the following:

- 1) Plaintiff notified Attorneys that she was filing Bankruptcy for an Order of Relief under Chapter 13.
- 2)The aforementioned case is currently pending before this court.
- 3)The gravamen of this motion is that despite Plaintiff's filing of bankruptcy, Defendants has a motion before the Federal Court civil action case no: 1:15-CV-292 requesting sanctions against Plaintiff, to enforce a judgment, to stop Plaintiff from filing Bankruptcy and a request to have the US Marshals to assist in repossession of autos. Defendants were notified on the Bankruptcy filing and has not withdrawn nor stayed this motion with the Courts or notified the Plaintiff.
- 4) Defendants are willfully attempting to ignore the Plaintiffs Bankruptcy stay and collect a debt, repossession and interfere with Plaintiff's personal bankruptcy.

FACTS

- 5) Defendants have entered the above claim into court and asking a judge for an order of approval. Defendants have not informed the Court of Plaintiffs Bankruptcy filing.

COUNT I: AUTOMATIC STAY APPLIES TO THE DEFENDANT

6) Section 362 stays action to collect a debt. Specifically, § 362(a)(6) protects Defendant from creditors that are acting in any capacity to collect, assess, or recover a claim against him that arose before the commencement of the bankruptcy proceedings.

7) Defendants is enjoined by the automatic stay from creditor attempts to collect a debt, repossession, or interfering Plaintiffs Bankruptcy to be stopped.

8) The filing of a petition bankruptcy effectuates automatic of all proceedings against debtor effective the date the petition is filed and actions taken in violation of stay are void, even if there is no actual notice of the stay. (Personalized Air Conditioning, Inc. v. C.M. Systems of Pinellas, 522 So.2d. 465 Fla.App. 4 Dist, 1988)

**COUNT II: THE COLLECTION OF A DEBT BY DEFENDANT VIOLATES
AUTOMATIC STAY**

9) Once a creditor receives notice of a Chapter 13 bankruptcy filing, creditor has an affirmative duty to undo its violations of automatic stay. (In re Keen, 301 B.R. 749 Bkrtcy. S.D. Fla. 2003).

10) There can be no doubt that the Defendant had knowledge of the Plaintiffs pending bankruptcy case.

11) Defendants are listed as a creditor in Plaintiff's bankruptcy petition under Schedule F.

12) Defendants originally violated the automatic stay when, with knowledge of debtor's Chapter 13 bankruptcy filing, and not withdrawing motions in the above mentioned case.

13) Defendant's actions of continuing for a court order for repossession and stopping Plaintiff's Bankruptcy and further refusing to return stop the procedures are in direct violation of the automatic stay.

COUNT III: VIOLATION OF THE STAY WAS WILLFUL

14) Defendant has acted with blatant disregard to court rules and procedures.

15) Defendants were listed as a creditor on Plaintiff's bankruptcy petition filing and had been advised on his pending bankruptcy.

16) Based on Defendant's actions of deliberately ignoring Plaintiff's Bankruptcy filing, Defendants have willfully violated the automatic stay in place for the Plaintiff.

17) A willful violation of the automatic stay occurs when the creditor knew that the stay had been invoked and deliberately intended the action that violated the stay (In re Hedetneimi 297 B.R. 837 Bkrcty. M.D. Fla. 2003).

COUNT IV: PLAINTIFF WAS INJURED BY DEFENDANTS CREDITOR MISCONDUCT

18) Defendants are deliberately harassing and instilling fear into Plaintiff and with the willful intent to injure Plaintiff.

19) Plaintiff filed for bankruptcy and believed she was relieved from the pressure and harassment from creditors seeking to collect their claims.

20) However, Defendant has failed to abide by the automatic stay and has not cancelled the fear of having US Marshals repossessing her autos, stopping her Bankruptcy and has left Plaintiff suffering from emotional distress.

21) Plaintiff has been injured by Defendants actions to collect a debt, repossession and to stop Plaintiff's Bankruptcy.

DAMAGES

WHEREFORE, Section 362(k)(1) provides that the court shall award an individual her costs and attorney's fees, in addition to actual damages. The debtor's damages include:

a) Lastly, the Plaintiff has suffered interruption, annoyance, and continuing anxiety as Plaintiff proceeds with her Chapter 13 bankruptcy filing.

Since actions taken in violation of the automatic stay are void, the court is urged to find Defendants in violation of the automatic stay and damages should be awarded to the Plaintiff.

Dated this 25th day of November, 2016.

By: Joyce M. Loney



JOYCE M. LONEY

4956 LONG BEACH RD, SE

STE 14 PMB 362

SOUTHPORT, NC 28461

910-477-2757

November 25, 2016

USAA FSB
BROOKS PIERCE
Matthew Tynan
Reid Phillips
P.O. BOX 26000
GREENSBORO, NC 27420-6000

Dear Defendant's:

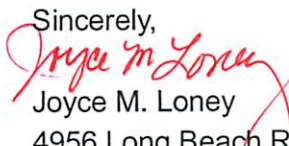
On November 08, 2016, I filed a voluntary petition under Chapter 13 of the U.S. Bankruptcy COde. The case number is 16-05804-SWH.

The Automatic Stay of the Petition under 11 U.S.C. Section (a), you may not:

- take any action against the debtor's) property to collect any debt;
- enforce any lien of debtor's) personal property;
- repossess any property in debtor's) possession.

A violation of these prohibitions may be considered contempt of court and be punished accordingly.

Sincerely,


Joyce M. Loney
4956 Long Beach Rd, SE
STE 14 PMB 362
Southport, NC 28461
910-477-2757

I, Joyce Loney verify that I placed a copy of this document via US Postal Service prepaid to the following:

USAA FSB
BROOKS PIERCE
Matthew Tynan
Reid Phillips
P.O. BOX 26000
GREENSBORO, NC 27420-6000